

STATE OF WISCONSIN CIRCUIT COURT RACINE COUNTY

FILED
10-12-2021
Clerk of Circuit Court
Racine County
2021CV001341
Honorable Eugene A.
Gasiorkiewicz
Branch 2

ERMELINDA CRUZ

8609 Camelot Trace
Sturtevant, WI 53177,

Plaintiff,

and

Case No.

**AMERICAN FAMILY MUTUAL INSURANCE
COMPANY, S.I.**

Case Code: 30101

Statutory Home Office Address:

6000 American Parkway

Madison, WI 53783

c/o Registered Agent for Service of Process:

Corporation Service Company

8040 Excelsior Drive, Suite 400

Madison, WI 53717,

and

UNITEDHEALTHCARE INSURANCE COMPANY

Statutory Home Office Address:

185 Asylum Street

Hartford, CT 06103

c/o Registered Agent for Service of Process:

CT Corporation System

301 S. Bedford Street, Suite 1

Madison, WI 53703,

and

DESIGNER BRANDS INC.

Principal Offices:

810 DSW Drive

Columbus, OH 43219

c/o Registered Agent for Service of Process:

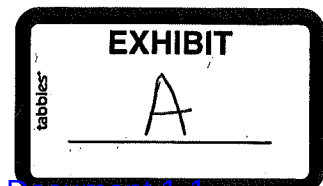
Corporation Service Company

50 West Broad Street, Suite 1330

Columbus, OH 43215,

Involuntary Plaintiffs,

vs.



**THE TRAVELERS INDEMNITY COMPANY OF
CONNECTICUT**

Statutory Home Office Address:

One Tower Square

Hartford, CT 06183

c/o Registered Agent for Service of Process:

Corporation Service Company

8040 Excelsior Drive, Suite 400

Madison, WI 53717,

and

MONSON & SONS, INC.

Principal Offices:

216 – 5th Street N.W.

Britt, IA 50423

c/o Registered Agent for Service of Process:

Ron E. Monson

216 – 5th Street N.W.

Britt, IA 50423,

and

TRAVIS CHRIS

118 Haines Avenue

Waterloo, IA 50701,

Defendants.

SUMMONS

THE STATE OF WISCONSIN:

To each person named above as a defendant:

YOU ARE HEREBY NOTIFIED that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter §802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is 730 Wisconsin Avenue, Racine, Wisconsin 53403, and to **Schoone, Leuck, Kelley, Pitts & Pitts, S.C.**, Plaintiffs attorneys, whose address is 6800 Washington Avenue, Post Office Box 085600, Racine, Wisconsin 53408-5600. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you may own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 12th day of October, 2021.

**Schoone, Leuck, Kelley, Pitts
& Pitts, S.C.**

Attorneys for the Plaintiff, Ermelinda Cruz

By: Electronically signed by Mark J. Leuck

Mark J. Leuck

State Bar No.: 1018359

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10-12-2021
Clerk of Circuit Court
Racine County
2021CV001341
Honorable Eugene A.
Gasiorkiewicz
Branch 2

STATE OF WISCONSIN CIRCUIT COURT RACINE COUNTY

Ermelinda Cruz,

Plaintiff,

and

American Family Mutual Insurance Company, S.I.,
UnitedHealthcare Insurance Company,
and
Designer Brands Inc.,

Involuntary Plaintiffs,

vs.

The Travelers Indemnity Company of Connecticut,
Monson & Sons, Inc.,
and
Travis Chris,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, by and through her attorneys, Schoone, Leuck, Kelley, Pitts & Pitts, S.C., and as and for claims against the Defendants, shows to the Court as follows:

1. The Plaintiff, Ermelinda Cruz (hereinafter referred to as "Cruz"), is an adult who resides at 8609 Camelot Trace, Sturtevant, WI 53177.
2. The Involuntary Plaintiff, American Family Mutual Insurance Company, S.I. (hereinafter referred to as "American Family"), is a Wisconsin insurance corporation with its statutory home office address as 6000 American Parkway,

Madison, WI 53783 and its registered agent for service of process being Corporation Service Company, 8040 Excelsior Drive, Suite 400, Madison, WI 53717.

3. The Involuntary Plaintiff, UnitedHealthcare Insurance Company (hereinafter referred to as "UnitedHealthcare"), is a foreign insurance corporation licensed to do business in the State of Wisconsin with its statutory home office address as 185 Asylum Street, Hartford, CT 06103 and its registered agent for service of process being CT Corporation System, 301 S. Bedford Street, Suite 1, Madison, WI 53703.
4. The Involuntary Plaintiff, Designer Brands Inc. (hereinafter referred to as "Designer Brands"), is a foreign insurance corporation doing substantial and not isolated business in the State of Wisconsin with its principal offices located at 810 DSW Drive, Columbus, OH 43219 and its registered agent for service of process being Corporation Service Company, 50 West Broad Street, Suite 1330, Columbus, OH 43215.
5. The Defendant, The Travelers Indemnity Company of Connecticut (hereinafter referred to as "Travelers"), is a foreign insurance corporation licensed to do business in the State of Wisconsin with its statutory home office address as One Tower Square, Hartford, CT 06183 and its registered agent for service of process being Corporation Service Company, 8040 Excelsior Drive, Suite 400, Madison, WI 53717.
6. The Defendant, Monson & Sons, Inc. (hereinafter referred to as "Monson"), is a

foreign corporation doing substantial and not isolated business in the State of Wisconsin with its principal offices located at 216 – 5th Street N.W., Britt, IA 50423 and its registered agent for service of process being Ron E. Monson, 216 – 5th Street N.W., Britt, IA 50423.

7. The Defendant, Travis Chris (hereinafter referred to as “Chris”), is an adult who, upon information and belief, resides at 118 Haines Avenue, Waterloo, IA 50701.
8. That on December 3, 2018, and at times relevant hereto, there was in full force and effect a policy of motor vehicle insurance coverage, including medical payments coverage, issued by American Family to and on behalf of Cruz pursuant to which policy American Family has made payment of medical payment benefits on behalf of Cruz to pay for some of the medical and treatment expenses incurred by Cruz for injuries she suffered in the motor vehicle collision of December 3, 2018.
9. That American Family may claim a right of subrogation and/or reimbursement by reason of the medical payments it made on behalf of Cruz and therefore American Family is a necessary and proper party to this litigation.
10. That in the event American Family fails to enter a timely and proper appearance in this action within forty-five (45) days of receipt of service of the Summons and Complaint, then the Court should enter judgment finding that American Family has waived the right to participate in this litigation and has waived any potential claim for subrogation and/or reimbursement.
11. That on and after December 3, 2018 UnitedHealthcare as the administrator of

a group health insurance plan has made payment of some of the medical expenses incurred by Cruz for treatment of injuries suffered in the motor vehicle collision of December 3, 2018 and UnitedHealthcare may claim a right of subrogation and/or reimbursement and is therefore a necessary party to this litigation.

12. That in the event UnitedHealthcare fails to enter a timely and proper appearance in this action within forty-five (45) days of receipt of service of the Summons and Complaint, then the Court should enter judgment finding that UnitedHealthcare has waived the right to participate in this litigation and has waived any potential claim for subrogation and/or reimbursement.
13. That upon information and belief, Designer Brands provided an employee welfare benefit plan as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1002(1), which, upon information and belief, is administered by UnitedHealthcare, which provided medical benefits to and on behalf of Cruz on and after December 3, 2018 for treatment of injuries suffered by Cruz in the motor vehicle collision of December 3, 2018 and Designer Brands may claim a right of subrogation and/or reimbursement and is therefore a necessary party to this litigation.
14. That in the event Designer Brands fails to enter a timely and proper appearance in this action within forty-five (45) days of receipt of service of the Summons and Complaint, then the Court should enter judgment finding that Designer Brands has waived the right to participate in this litigation and has waived any potential claim for subrogation and/or reimbursement.

15. That on and before December 3, 2018 Monson owned and operated a trucking company that did substantial and not isolated business activity in the State of Wisconsin including Racine County, Wisconsin.
16. That on December 3, 2018 Chris was an employee of Monson operating a semi-tractor trailer rig within the scope of his employment for Monson at all times on December 3, 2018 as set forth below.
17. That on December 3, 2018, and at all times relevant hereto, there was in full force and effect a policy or policies of insurance, including liability insurance, issued by Travelers providing coverage to and on behalf of Monson and Chris.
18. That pursuant to the terms and conditions of the policy or policies issued by Travelers providing coverage to and on behalf of Monson and Chris, Travelers agreed to indemnify Monson and Chris from claims arising out of the negligent operation of a motor vehicle including the semi-tractor trailer rig operated by Chris on December 3, 2018 and further, Travelers agreed to indemnify Monson and Chris from claims arising out of the negligent operation of a motor vehicle and therefore Travelers is directly liable to Cruz for all of her injuries, damages, and claims as set forth hereafter and, in addition, Travelers is jointly and severally liable with Monson and Chris for all of the injuries, damages, and claims of Cruz as set forth hereafter.
19. That on the afternoon of December 3, 2018 Chris was operating a semi-tractor trailer rig owned by Monson within the scope of employment for Monson travelling southbound on Interstate Highway 43 near Mile Marker 57.8 in New

Berlin, Wisconsin when a collision occurred with a motor vehicle operated by Cruz that was also traveling southbound on Interstate Highway 43.

20. That on the afternoon of December 3, 2018 Cruz was operating her motor vehicle in the right southbound lane of Interstate Highway 43 travelling southbound; that at that time Chris was operating the semi-tractor trailer rig owned by Monson in the left southbound lane of Interstate Highway 43 behind and to the left of the southbound Cruz vehicle.
21. That Chris caused the semi-tractor trailer rig to accelerate and attempt a lane change to the right into the lane occupied by the southbound Cruz vehicle.
22. That Chris so negligently and carelessly operated the semi-tractor trailer rig so as to cause the vehicle he was operating to crash into the rear driver's side of the Cruz vehicle causing the Cruz vehicle to spin; that Chris continued to negligently and carelessly operate the semi-tractor trailer rig causing the semi-tractor trailer rig to impact the Cruz vehicle multiple additional times.
23. That the negligence of Chris operating the semi-tractor trailer rig as an employee of Monson proximately caused the multiple collisions between the semi-tractor trailer rig and the vehicle operated by Cruz.
24. That the negligence of Chris in the operation of the semi-tractor trailer rig within the scope of his employment for Monson was the proximate cause of all of the injuries, damages, and claims of Cruz as set forth below.
25. That as a result of the multiple collisions between her motor vehicle and the semi-tractor trailer rig, Cruz suffered bodily injuries which have caused her past

pain, suffering, disability, and mental and emotional distress.

26. That injuries suffered by Cruz in the multiple motor vehicle collisions of December 3, 2018 are expected to be permanent in which event Cruz will experience future pain, suffering, disability, and mental and emotional distress.
27. That as a result of the injuries and disability suffered in the motor vehicle collisions Cruz has required medical care and treatment in the past for which she has incurred past medical and treatment expense.
28. That by reason of the expected permanent nature of injuries and disability suffered by Cruz in the motor vehicle collisions it is expected that Cruz will require future medical care and treatment for which she will incur future medical and treatment expense.
29. That as a result of the injuries and disability suffered in the collision Cruz has suffered a loss of income and earning capacity.

WHEREFORE, Ermelinda Cruz requests judgment directly as against The Travelers Indemnity Company of Connecticut and also requests judgment jointly and severally as against The Travelers Indemnity Company of Connecticut, Monson & Sons, Inc., and Travis Chris as follows:

1. For fair compensation for the injuries, damages, and claims of Ermelinda Cruz in each of the following categories:
 - a. Past pain, suffering, disability, and mental and emotional distress;
 - b. Future pain, suffering, disability, and mental and emotional distress;
 - c. Past medical and treatment expense;

- d. Future medical and treatment expense; and
 - e. Loss of income and earning capacity;
- 2. In the event American Family Mutual Insurance Company, S.I. enters a timely and proper appearance in this action and has a valid and enforceable claim for subrogation and/or reimbursement, then for payment of said claim;
 - 3. In the event UnitedHealthcare Insurance Company enters a timely and proper appearance in this action and has a valid and enforceable claim for subrogation and/or reimbursement, then for payment of said claim;
 - 4. In the event Designer Brands Inc. enters a timely and proper appearance in this action and has a valid and enforceable claim for subrogation and/or reimbursement, then for payment of said claim;
 - 5. For the taxable costs, disbursements, and attorneys' fees incurred in this litigation; and
 - 6. For such other and further relief as may be just and equitable;

That Plaintiff further seeks potential alternative judgment regarding the subrogated carriers as follows:

- 7. In the event American Family Mutual Insurance Company, S.I. fails to enter a timely and proper appearance in this action within forty-five (45) days after receipt of service of the Summons and Complaint, then for judgment finding that American Family Mutual Insurance Company, S.I. has waived the right to participate in this litigation and has waived any potential claim for subrogation and/or reimbursement;
- 8. In the event UnitedHealthcare Insurance Company fails to enter a timely and proper appearance in this action within forty-five (45) days after receipt of service of the Summons and Complaint, then for judgment finding that UnitedHealthcare Insurance Company has waived the right to participate in this litigation and has waived any potential claim for subrogation and/or reimbursement; and
- 9. In the event Designer Brands Inc. fails to enter a timely and proper appearance in this action within forty-five (45) days after receipt of

service of the Summons and Complaint, then for judgment finding that Designer Brands Inc. has waived the right to participate in this litigation and has waived any potential claim for subrogation and/or reimbursement.

Dated this 12th day of October, 2021.

**Schoone, Leuck, Kelley, Pitts
& Pitts, S.C.**

Attorneys for the Plaintiff, Ermelinda Cruz

Electronically signed by Mark J. Leuck

Mark J. Leuck

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